

ESTTA Tracking number: **ESTTA116097**

Filing date: **12/21/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Huffy Sports Delaware, Inc.
Granted to Date of previous extension	12/24/2006
Address	225 Byers Road Miamisburg, OH 45342 UNITED STATES
Attorney information	Nancy S. Lapidus Howrey LLP 2941 Fairview Park Drive Suite 200 Falls Church, VA 22042 UNITED STATES lapidusn@howrey.com, ipdocketing@howrey.com, hillt@howrey.com Phone: 2027830800

Applicant Information

Application No	78620757	Publication date	06/27/2006
Opposition Filing Date	12/21/2006	Opposition Period Ends	12/24/2006
Applicant	Under Armour, Inc. 1020 Hull Street Baltimore, MD 21230 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Clothing, namely, underwear, bras, shorts, tights, leggings, tank tops, shirts, polo shirts, t-shirts, long sleeve shirts, rain suits, pants, jackets, vests, headwear, skirts, shorts, mock turtlenecks, turtlenecks, gloves, sliding shorts, arm warmers, socks, and wristbands; footwear
--

Attachments	Notice of Opposition - Huffy Sports Delaware, Inc. v. Under Armour, Inc.pdf (6 pages)(310693 bytes)
-------------	--

Signature	/Nancy S. Lapidus/
Name	Nancy S. Lapidus
Date	12/21/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application No. 78/620757

Filed: May 2, 2005

Applicant: Under Armour, Inc.

Mark: ARMOUR

Class: 25

Published in the *Official Gazette* of June 27, 2006

Huffy Sports Delaware, Inc.

Opposer

v.

Under Armour, Inc.

Applicant

Opposition No. _____

NOTICE OF OPPOSITION

Huffy Sports Delaware, Inc., a Delaware corporation, having its principal place of business at 225 Byers Road, Miamisburg, Ohio 45342 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark ARMOUR shown in Application No. 78/620757 and hereby opposes same.

The grounds for the opposition are as follows:

(1) Application Serial No. 78/620757 (hereinafter the "opposed application") seeks registration of the mark ARMOUR for the following goods: clothing, namely, underwear, bras, shorts, tights, leggings, tank tops, shirts, polo shirts, t-shirts, long sleeve shirts, rain suits,

pants, jackets, vests, headwear, skirts, skorts, mock turtlenecks, turtlenecks, gloves, sliding shorts, arm warmers, socks, and wristbands; footwear.

(2) The opposed application was filed on May 2, 2005, based on a claim of Applicant's bona fide intent to use the mark ARMOUR in commerce.

(3) Long prior to the May 2, 2005 filing date of the opposed application, Opposer's predecessors adopted, used and Opposer, through its licensee, still is using the trademark TOMMY ARMOUR in interstate commerce for a wide variety of clothing and sporting goods.

(4) In accordance with § 5 of the Federal Trademark Act, all use of the trademark TOMMY ARMOUR by Opposer's licensee, as alleged herein, inures to the benefit of Opposer.

(5) Opposer is the owner of the trademark TOMMY ARMOUR, alone and in combination with certain other words and designs as described herein. Opposer and its predecessors and licensee have continuously used said name and mark for a wide variety of clothing and sporting goods, and in the advertising and sale thereof, in interstate commerce since long prior to the filing date of the opposed application.

(6) The clothing and sporting goods licensed by Opposer under the trademark TOMMY ARMOUR for all golf equipment and apparel includes long and short sleeve t-shirts; shirts; sweaters; sweater vests and sweater jackets; turtlenecks; mock turtlenecks; fleece pullovers; polo shirts; shorts; slacks; jackets; vests; wind shirts and wind resistant jackets and vests; waterproof jackets and pants; capri pants; skorts; skirts; footwear; gloves; sweatshirts and sweatpants; socks; and headwear, namely, hats, caps and visors; golf clubs; golf bags; golf balls; golf tees; golf gloves; golf accessory pouches; golf bag covers; golf club covers; golf bag tags; golf ball markers; golf ball sleeves; golf putting and golf club swing aids, namely, practice nets, balls, targets, mats, golf ball dispensers, and putting and chipping pads; hand-

pulled golf bag carts; golf ball retrievers; golf club organizers; golf umbrellas; and golf travel bag cases.

(7) By virtue of the prior and continuous advertising and sales of the wide variety of clothing and sporting goods described above and the maintenance of high quality standards relating thereto, purchasers of such goods and others have come to recognize the mark TOMMY ARMOUR as a distinctive and singular indication of origin, as a consequence of which Opposer has established valuable goodwill and exclusive rights in this mark.

(8) Opposer's predecessor duly registered TOMMY ARMOUR as a trademark for golf clubs and golf bags in the United States Patent and Trademark Office under Registration No. 1,379,348 which issued January 21, 1986. Opposer is the record owner of Registration No. 1,379,348 by virtue of an Assignment recorded in the Assignment Branch on May 31, 2006 at Reel 3318, Frame 0597.

(9) Opposer's predecessor duly registered TOMMY ARMOUR as a trademark for golf umbrellas and golf travel bag cases in the United States Patent and Trademark Office under Registration No. 2,929,892 which issued March 1, 2005. Opposer is the record owner of Registration No. 2,929,892 by virtue of an Assignment recorded in the Assignment Branch on May 31, 2006 at Reel 3318, Frame 0597.

(10) Opposer's predecessor duly registered TOMMY ARMOUR as a trademark for golf equipment, namely, golf balls; golf tees; golf gloves; golf accessory pouches; golf bag covers; golf club covers; golf bag tags; golf ball markers; golf ball sleeves; golf putting and golf club swing aids, namely, practice nets, balls, targets, mats, golf ball dispensers, and putting and chipping pads; hand-pulled golf bag carts; golf ball retrievers; and golf club organizers in the United States Patent and Trademark Office under Registration No. 2,968,530 which issued

July 12, 2005. Opposer is the record owner of Registration No. 2,968,530 by virtue of an Assignment recorded in the Assignment Branch on May 31, 2006 at Reel 3318, Frame 0597.

(11) Opposer's predecessor duly registered TOMMY ARMOUR SILVERBACK as a trademark for apparel, namely, long and short sleeve t-shirts; shirts; sweaters; sweater vests and sweater jackets; turtlenecks; mock turtlenecks; fleece pullovers; polo shirts; shorts; slacks; jackets; vests; wind shirts and wind resistant jackets and vests; waterproof jackets and pants; capri pants; skorts; skirts; footwear; gloves; sweatshirts and sweatpants; socks; caps; golf clubs; golf club head covers; and golf bags in the United States Patent and Trademark Office under Registration No. 3,002,280 which issued September 27, 2005. Opposer is the record owner of Registration No. 3,002,280 by virtue of an Assignment recorded in the Assignment Branch on May 31, 2006 at Reel 3318, Frame 0597.

(12) Opposer's predecessor filed Application Serial No. 78/238076 on April 15, 2003, seeking to register the mark TOMMY ARMOUR for men's, women's, and youth apparel, namely, long and short sleeve t-shirts; shirts; sweaters; sweater vests and sweater jackets; turtlenecks; mock turtlenecks; fleece pullovers; polo shirts; shorts; slacks; jackets; vests; wind shirts and wind resistant jackets and vests; waterproof jackets and pants; capri pants; skorts; skirts; footwear; gloves; sweatshirts and sweatpants; socks; and headwear, namely, hats, caps and visors. Opposer is the record owner of Application No. 78/238076 by virtue of an Assignment recorded in the Assignment Branch on May 31, 2006 at Reel 3318, Frame 0597.

(13) Opposer's predecessor filed Application Serial No. 78/603090 on April 6, 2005, seeking to register the mark TAG TOMMY ARMOUR GOLF & Design for golf clubs and golf bags. Opposer is the record owner of Application No. 78/603090 by virtue of an Assignment recorded in the Assignment Branch on May 31, 2006 at Reel 3318, Frame 0597.

(14) Registration Nos. 1,379,348, 2,929,892, 2,968,530 and 3,002,280 are *prima facie* evidence of the validity thereof and Opposer's ownership and exclusive right to use the marks TOMMY ARMOUR and TOMMY ARMOUR SILVERBACK in commerce, and are constructive notice of Opposer's ownership thereof, all as provided by §§ 7(b) and 22 of the Federal Trademark Act of 1946, as amended.

(15) The right to use the mark TOMMY ARMOUR having become incontestable, Registration No. 1,379,348 is conclusive evidence of Opposer's exclusive right to use the mark shown therein in commerce as provided by §§ 15 and 33(b) of the Federal Trademark Act.

(16) The goods on which Opposer and its predecessors and licensee have used and continue to use the mark TOMMY ARMOUR, as described in Opposer's Registration Nos. 1,379,348, 2,929,892, 2,968,530 and 3,002,280 and Application Nos. 78/238076 and 78/603090, and the goods described in Application No. 78/620757 are identical and/or commercially related, and are likely sold and/or rendered to the same or overlapping classes of purchasers. Therefore, purchasers, prospective purchasers and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's goods sold under the mark ARMOUR emanate from and/or are in some way sponsored or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

(17) Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that Applicant's mark ARMOUR, as used in connection with the goods described in the opposed application, so resembles TOMMY ARMOUR, as to be likely to cause confusion, to cause mistake or to deceive within the meaning of § 2(d) of the Federal Trademark Act, thereby damaging Opposer.

WHEREFORE, Opposer believes that the present opposition should be sustained and the registration of Applicant's mark refused.

The requisite filing fee for this Notice of Opposition is submitted herewith.

HUFFY SPORTS DELAWARE, INC.

Dated: December 21, 2006

By:



Nancy S. Lapidus
Attorneys for Petitioner
Howrey LLP
1299 Pennsylvania Ave, NW
Washington, DC 20004
Tel: 202-783-0800
Fax: 202-383-7195